IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 164 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIPAK PRAVINCHANDRA JARIWALA

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR SD DAVE APP for Respondent - State

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/04/2002

ORAL JUDGEMENT

1. The present petitioner has been externed by the Deputy Commissioner of Police, Surat by his order dated 14/09/2000 from Surat City and adjoining districts namely, Surat Rural, Navsari, Bharuch and Navsari for a period of two years for which, the show cause notice was

issued to the present petitioner on 17/6/1999 on the basis of two criminal cases being C.R.No.22/99 dated 2/1/1999 and C.R.No.23/99 dated 31/12/1998 alongwith the others and ultimately, the aforesaid externment order has been passed.

2. Being aggrieved and dissatisfied by the above referred order, the present petitioner has preferred an appeal on 6/12/2001 before the Appellate Authority and the same has been rejected by the Appellate authority by order dated 1/2/2002. Being aggrieved and dissatisfied by the above referred order, the petitioner has preferred the present petition, wherein Rule has been issued on 15/02/2002.

3. I have heard the learned counsel for the petitioner and learned APP for the respondent - State.

4. The learned counsel for the petitioner has raised various points in the petition but at the time of arguments, he has restricted his argument on the point of delay in passing the impugned order. In this connection, he has relied upon the judgment in the case of Chothmal Sagansingh Rajput v. State of Gujarat, reported in 1989 (1) GLR 63, more particularly para-6. He has drawn my attention towards the show cause notice from the record and proceedings which has been shown by me by the learned counsel for the petitioner. The learned counsel for the petitioner has further argued that the show cause notice has been issued by the authority to the petitioner on 17/6/1999 and, thereafter, the proceedings has been initiated by the respondent and passed the impugned order on 14/9/2000 and according to him, there is a delay of more than one year and three months in passing the impugned order of externment. He has contended that the same point covered by the above referred judgment and, therefore, the impugned order is liable to be quashed and set aside.

5. I have gone through the show cause notice and impugned order passed by the externing authority. It is to be noted that the externing authority has issued show cause notice on 17.6.1999 and passed the impugned order on 14.9.2000 and, therefore, there is delay of more than 1 year and 3 months in passing the impugned order. In support of the above contentions, the learned counsel for the petitioner has relied upon the judgment in the case of Chothmal Sagansingh Rajput v. State of Gujarat, reported in 1989 (1) GLR 63. It has been held by this Court in Chothmal Sagansingh Rajput (Supra) more particularly in para-6 as under :-

" It is next contended for the petitioner that the authorities concerned have mechanically applied their mind and externed the petitioner after a delay of nearly five months subsequent to be closing of the arguments. In externing a person, which is in the public interest, the authorities are expected to act promptly and if they delay the matter, the same will spell out that there is no urgent need nor necessity to extern a person from a particular locality or the District. Definitely such externment orders curtail the freedom of movement of the persons concerned. Any latches on the part of the authority concerned cannot be countenanced and it will definitely enure to the benefit of the party concerned and on that score he will be entitled to the benefit of quashing such an order of externment.

The Bench of the Bombay High Court has clearly stated that the delay in passing an order of externment is not ipso facto fatal to the externment order, for in certain cases delay may be unavoidable and reasonable. Thus, it is clear that if the delay is unavoidable and reasonable, the explanation can be accepted. As far as the present case is concerned, looking to the affidavit of Superintendent of Police and also Annexure 'A' attached to his affidavit, it does not spell out any unavoidable and reasonable explanation for such an inordinate delay in sending the report to the externing authority. Following the very same reasoning and principles laid down by this Court, in the facts and circumstances of the present case the Court held that there was definitely inordinate delay in sending the report and, therefore, the order of externment could not be sustained."

6. In view of the above, since there is a delay in passing the impugned order which has not been satisfactorily explained by the authorities, impugned order is required to be quashed and set aside.

7. For the reasons given hereinabove, this application is allowed. The impugned order of externment passed on 14.09.2000 by Deputy Commissioner of Police,

Surat and confirmed by the Appellate Authority on 01.02.2002 are hereby quashed and set aside. Rule is made absolute. Direct service is permitted.

(R.P.Dholakia,J.)

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